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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91209857
Party	Defendant Carlos Deford Bailey and Deford Bailey III
Correspondence Address	WALTER M BENJAMIN PO BOX 6099 TULSA, OK 74148 UNITED STATES ronbailey8@gmail.com, wabenj@netzero.com
Submission	Answer
Filer's Name	Walter M. Benjamin
Filer's e-mail	wabenj@juno.com, wabenj@netzero.com
Signature	/Walter M. Benjamin/
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

DEFORD BAILEY, LLC,	)	
Opposer,	)	OPPOSITION NO. 91209857
	)	
-vs-	)	APPLICATION SERIAL NO. 85304626
	)	
CARLOS DEFORD BAILEY,	)	Published in the Official Gazette on
Applicant.	)	February 19, 2013

AMENDED ANSWER TO AMENDED OPPOSITION

COMES NOW Applicants, Carlos Deford Bailey and Deford Bailey III, by and through their attorney, Walter M. Benjamin, and for their Answer to the Amended Opposition, submit the following:

1. Applicants deny each and every allegation of Opposer, Deford Bailey, LLC (“DB LLC”) except for that which is specifically admitted herein and require strict proof of all allegations denied by Applicants.
2. Applicants admit to paragraph 1;
3. Applicants are without knowledge or information sufficient to form a belief as to the truth of paragraph 2 and therefore deny the allegation of paragraph 2. Applicants formed the “Deford Bailey Foundation” a non profit corporation on May 23, 2011 and “Deford Bailey Group, LLC” on May 19, 2011, both prior to the time Opposer’s organization was formed;
5. That Opposers have not engaged in any activity that is likely to be confused with the

sale of Applicant's harmonicas;

6. Applicants denies paragraph 3 except Applicants admit that Deford Bailey, Jr., Christine Lamb and Dezoral Thomas are the heirs of Deford Bailey, Jr. Applicants asserts that Christine Lanb and Dezoral Thomas are not in agreement with the present opposition.
7. Deford Bailey, Jr. was an 81 year old man with a 6<sup>th</sup> grade education who could not have read and understood the alleged assignment of his rights to certain intellectual property.
8. Applicants specifically deny allegations of Paragraphs 4 - 11.
9. With regard to paragraph 9, further states that the licensing agreement is not valid; that Opposer did not have the exclusive right to the subject of the licensing agreement; That Applicant Deford Bailey III did not sign or agree to the licensing agreement;
10. Further with regard to paragraph 9, the invalid license agreement came about when Applicant Carlos Deford Bailey was invited to an event to perform in honor and benefit his aging father, Deford Bailey Jr. At the said event Applicant Carlos Deford Bailey wanted to sell harmonicas and t-shirts honoring his Grandfather, Deford Bailey. Shameka Wiley, who planned the event, insisted that if Carlos Deford Bailey was to sell items, at her event, he should pay a percentage to the event. Carlos Deford Bailey agreed to sign a agreement for the one day event. Shameka Wiley produced the invalid licensing agreement which Carlos Deford Bailey, an meager educated man, signed thinking it was a one time agreement for the one event. The invalid licensing agreement was signed on the exact day of the event. Similarly,

Shameka Wiley required others to give a percentage of their proceeds to the event.

11. Additionally with regard to paragraph 9, by signing the invalid licensing agreement, Shameka Wiley and opposers acknowledged the legitimacy of the name of “Carlos Deford Bailey”.

### **AFFIRMATIVE DEFENSES**

8. The Bailey family is a musically talented family, beginning with DB Sr., deceased, who was an African American who principally played Country and Western music, however his heirs strictly performed rhythm and blues or blues music to today.
9. However, starting the year 1998 to the present Carlos to the exclusion of the rest of the family included country and western music in his performances. He began referring to himself on stage as Carlos Deford Bailey instead of Carlos Bailey for the express purpose of promoting the name of DB, Sr. No family member objected to this. Carlos is known in Nashville, TN as “Carlos Deford Bailey”.
10. Carlos began promoted the name of DB Sr., deceased, by various means, first of all by singing the country and western songs DB Sr. wrote and performed. No family member objected to this.
11. Over a 15-year span, Carlos did many things to promote DB Sr.’s legacy, including the change in his name, promoting DB Sr.’s songs, performed at numerous events playing the harmonica in the manner his grandfather played, promoted DB, Sr.’s name to be inducted in the Country Music Hall of Fame as well as other substantial means well known by the family. Carlos (as Carlos Deford Bailey) performed DB Sr.’s songs during the induction ceremony in 2005. Carlos donated DB Sr. Items to

museums, Carthage, TN museum and the Roy Bailey museum.

12. Carlos used the money from those events to promote the name of DB Sr.
13. All of the Bailey family were aware of what Carlos was doing, but were not very interested because they weren't drawn to country and western music. On a very few occasions the heirs would assist Carlos in promoting the name of DB, Sr.
14. DB Sr.'s name was forgotten - the basis of the PBS special "Deford Bailey, A Legend Lost" based upon the book written by David Morton and Charles Wolfe, "A Black Star in Early Country Music". However as a result of the book and the work done by Carlos, the name of DB, Sr. began to increase in value culminating in DB, Sr. being inducted into the Country Music Hall of Fame along with Glen Campbell and the singing group, Alabama.
15. In the midst of other promotions, Carlos decided to promote DB Sr. by selling harmonicas with the likeness of DB thereon. Carlos had his brother DB, III to join him in the registration of the trademark, "Deford Bailey" for the musical instrument, harmonica. Both applicants physically signed the application.
16. Applicant, Deford Bailey, III exclusively played drums, for well known artists, but agreed to join in with his brother in pursuing the trademark of the likeness of his name, Deford Bailey.
17. After Carlos used and promoted the name of DB, Sr. for 15 years, a Bailey family member, Applicants believe to be Shameka Wiley, Applicant's niece, used Deford Bailey, LLC to take over any monetary proceeds from the likeness and music of DB, Sr.
18. Shameka Wiley has little credibility due to a record of three felonies convictions-

attempted murder, and two cases of drug trafficking whom Applicants allege manipulated the 81 year old Deford Bailey, Jr. into signing an alleged assignment.

19. DB, Sr. has been deceased for over 30 years.
20. Applicants overcame a likelihood of confusion rejection by the Examiner citation of the trademark “D Deford” by Applicants entering into a coexistence agreement with the cited trademark owner, Emerson Deford. Opposers, nor any of its members filed any opposition against the “D Deford” trademark application.
21. Applicant Deford Bailey III derived the rights to the name Deford Bailey from his father by virtue of being given that name. His father derived the right to that name from his grandfather. That right cannot be taken away by subsequently granting that right to a third party.
21. Based upon the above allegations and statements, Applicants assert the affirmative defenses of Laches, Estoppel and Acquiescence.

WHEREFORE, Applicants, Carlos Deford Bailey and Deford Bailey III pray that the Amended Opposition No. 91209857 be denied in favor of Applicants and the trademark “Deford Bailey” be allowed on the principal register.

Respectfully submitted,  
Carlos Deford Bailey  
Deford Bailey, III

By: /Walter M. Benjamin/  
Walter M. Benjamin  
Attorney for Applicants  
P.O. Box 6099  
Tulsa, OK 74148  
(918) 694-7891  
Fax: (877) 532-0369  
wabenj@netzero.com

**Certificate of Service**

I, Walter M. Benjamin, hereby certify that on the 10<sup>th</sup> day of September, 2014, he sent by e-mail and he placed in the U.S. Mail with proper postage thereon a true and correct copy of the foregoing Answer to the Amended Opposition addressed to:

Maria A. Spear  
Amy J. Everhart  
Everhard Law Firm, PLC  
1400 Fifth Ave. North  
Nashville, TN 37208

/Walter M. Benjamin/  
Walter M. Benjamin